



# NORTHWEST LEGAL BRIEFS

Fall 2021

Region Legal Service Office Northwest

## Command News

On 15 August 2021, Region Legal Service Office (RLSO) Northwest merged with RLSO Hawaii. The merger created a unified RLSO headquartered in Bremerton, Washington, with a detachment in Pearl Harbor, Hawaii, as well as three branch offices in Washington State.

According to RDML David Wilson, Commander, Naval Legal Services Command, the merger “ensures our judge advocates, enlisted Legalmen, and civilian personnel can more effectively address fleet needs in a large and strategically significant area of responsibility” and “enhances our capabilities and the delivery of legal services to naval commanders at the tip of the spear.”

RLSO Northwest Detachment Hawaii is located aboard Joint Base Pearl Harbor-Hickam. It includes a Trial Services Department—which prosecutes courts-martial—and a Command Services Department—which advises naval commands and commanders on numerous subjects, from admiralty to personnel matters. The detachment also includes a Legal Assistance Department, which educates local Sailors and their families on their personal legal rights and responsibilities, and provides expert counsel in several legal practices areas, such as divorce, bankruptcy, or consumer fraud.

## Command Services Department

### ‘Tis (Almost) the Season

As we pass the threshold of 100 days until Christmas, command holiday parties so too are just

around the corner. Holiday parties are the perfect time for co-workers to get together and celebrate the season, but they also can be ethical minefields. In an attempt to alleviate some of that holiday stress, below are some of the basics of holiday-related ethics issues to keep in mind as we approach winter.

First off, holiday parties are usually unofficial events, which means that, should you attend any such party, you will be doing so solely in your personal capacity. Relatedly, any planning for the party should also be done off the clock and appropriated funds and government vehicles should not make the RSVP list. Finally, any contracts entered into in connection with the party should not include the Navy or federal government as the contracting party or represent that they bind the federal government in any capacity.

Second, fundraising for the party can be tricky. “By our own, for our own” (BOOFOO) fundraisers, in which service members sell tickets or otherwise fundraise amongst themselves and their dependents for use at their own parties, are usually permitted (see DoD 5500.07-R (JER) §3-210). However, any organization that seeks to fundraise on base, or requests some sort of logistical support from a base, will have to adhere to that base’s particular instructions and guidelines on operating and fundraising. As a rule of thumb, fundraising and contributions from outside sources, including commercial sponsorships, are not allowed.

Finally, gift giving between co-workers should be done carefully. Generally, gifts given between peers, or from a supervisor to a subordinate, are good to go, so long as the gift is given in good

**Disclaimer:** The views presented in this newsletter are those of the authors and do not necessarily represent the views of the DoD or the U.S. Navy.



# NORTHWEST LEGAL BRIEFS

Fall 2021

Region Legal Service Office Northwest

taste, the giver exercises common sense in the selection of the gift, and the gift does not imply any sort of favoritism towards a particular subordinate. However, gifts from a subordinate (or anyone making less pay than the recipient) to a supervisor are generally not allowed unless: (i) the gift is given on an occasional basis (i.e. the holiday season) and is a non-cash item worth less than \$10; or (ii) the supervisor is accepting food and refreshments at a communal holiday party, for which they can offer to share in the expenses (see JER §2-203).

Winter may be coming, but holiday-party related ethical dilemmas need not. The above basics are helpful to note but always remember to consult a JAG when in doubt of the right move when it comes to ethics and work holiday gatherings – it's the best way to stay off the naughty list.

*By LT Erin Barrett*

## Legal Assistance Department

### WA Cares Act and the Military

When you are older and losing your hair many years from now, Washington State may not be sending you a Valentine, birthday greetings, or a bottle of wine... but they will be helping to pay for long-term-care costs, including services and support, through their first-in-the-country, long term care act!

On 21 April 2021, Washington State Governor, Jay Inslee, signed into law the Long-Term Services and Supports (LTSS) Trust Act. This law established the WA Cares Fund ("the Fund"), making Washington State the first state in the country to adopt a mandatory, public, state-run long-term-care insurance program. Beginning 1 January 2022, Washington workers will pay into the Fund via a

payroll deduction in the amount of \$0.58 per \$100 of earnings. In exchange, people who are eligible to receive benefits from the Fund will be able to receive access to services and supports costing up to \$36,500 per year. Washington workers who are able to secure alternate, private, long-term-care insurance by 1 November 2021 and provide proof of such insurance will be exempt and will not see the payroll deduction.

Many expressions of concern have come from military families surrounding the creation of this law. The main concern expressed has been that, given that the first condition of eligibility to receive benefits is residency in Washington State at the time you claim benefits, many military families will not choose to return or remain in Washington State following their tour, thus making them ineligible for benefits. However, since the only exemption is to provide proof of alternate long-term-care insurance by 1 November 2021, military members and their families are assuming they would still be forced to pay into this care plan.

And they would be partially right in that assumption – but not entirely. The following FAQs are intended to help clarify some of the questions surrounding the WA Cares Act and its implementation.

### **How will this tax be implemented?**

The premium assessed against a person will be a payroll tax, deducted from each paycheck – similar to paid family medical leave or other state assessed premiums.



# NORTHWEST LEGAL BRIEFS

Fall 2021

Region Legal Service Office Northwest

## **Who is impacted? Who will be required to pay the premium?**

The premium will only impact people with employment in Washington State – federal employees (active duty military and civilians) are not considered as “having employment in Washington State” and therefore will not see a premium assessed on their payroll, regardless of whether they are Washington residents, or not.

## **So what does that mean for military and dependents?**

For military, there will be no impact on their military pay. However, if they have outside employment that is not a federal job, they will see the premium deducted from the paycheck for that outside employment. (Remember, all military personnel must report and obtain permission for outside employment!)

For dependents, if they are employed by a company other than the federal government, and that company is located in Washington State, they will see the premium deducted from their paycheck starting 1 January 2022.

## **Is there an exemption?**

No. The only exemption is if someone already has long-term-care insurance from another source and can provide proof of that care policy. Proof of that policy must be produced by 1 November 2021. The military does not provide any long-term-care insurance. There is no exemption for military, dependents, or any other group of people who may ultimately leave the state before they can benefit from the program.

## **Is there a way to recoup the money at a later time if/when we move away?**

Currently, no. There is an advisory council that has a subcommittee specifically looking at benefit eligibility and how that plays out long term. They are specifically looking at the issue of people who have paid into the system and cannot benefit later in life. There are several categories of people besides military and their dependents who have the same concern about leaving the state before they would be eligible for benefits, so it is of concern to the subcommittee and the leadership on it. The subcommittee is specifically aware, however, of the concern for military and dependents, and we are hopeful that there will be headway towards a plan for recoupment for people who leave the state prior to eligibility.

## **When will we hear more about possible changes in the law that could include a recoupment?**

The law cannot be changed until the legislature resumes session. Sessions resume 10 January 2022. Until that time there will be no official headway towards possible changes, including a recoupment clause. However the subcommittee has several members of the legislature on it, and they are heavily engaged – and will remain so until sessions resume – with drafting proposals for changes to the WA Cares Act.

If you have additional questions or concerns regarding the WA Cares Act or its applicability to you, please contact Region Legal Service Office Northwest Legal Assistance Department at 360-396-6003 and ask to schedule an appointment with LCDR Leslie Stephenson or Mr. David Alston.

*By LCDR Leslie Stephenson*



# NORTHWEST LEGAL BRIEFS

Fall 2021

Region Legal Service Office Northwest

## Military Justice Department

### PTC and Good Order and Discipline

On 27 September 2021, United States Marine Corps Lieutenant Colonel Stuart Scheller was placed in pretrial confinement (PTC). His case gained notoriety in a variety of news outlets and on numerous social media sites in late August after he posted a video on Facebook and LinkedIn criticizing the handling of the U.S. withdrawal from Afghanistan. His case and the decision to place him into pretrial confinement offer an opportunity to review the purposes, procedures, and standards for pretrial confinement or restraint.

Under R.C.M. 305(d)(1), probable cause exists to order a person into military pretrial confinement “when there is a reasonable belief that: (1) An offense triable by court-martial has been committed; (2) The person confined committed it; and (3) Confinement is required by the circumstances.” Because the initial probable cause standard to order PTC is broad, R.C.M. 305 lays out further requirements in order to keep an individual in PTC for an extended period of time. R.C.M. 305(h)(2)(A) requires that within 72 hours of confinement, a commander review the decision to order PTC and determine whether the PTC will continue. Under R.C.M. 305(h)(2)(B), more detailed requirements for confinement are set forth which the commander must review with a probable cause standard. This expanded probable cause determination dictates that “Confinement is necessary because it is foreseeable that: (a) The confine will not appear at trial, pretrial hearing, or preliminary hearing, or (b) The confine will engage in serious criminal misconduct; and (iv) Less severe forms of restraint are inadequate.”

There are many different forms of less serious restraint which could be used instead of pretrial confinement. These restraints can be moral or physical restraints on a person’s liberty that do not rise to the level of pretrial confinement. Possible forms of restraint include conditions on liberty, restriction in lieu of arrest, and arrest. Consistent with the discussion section to R.C.M. 305(h)(2), “[l]ess serious forms of restraint *must always be considered* before pretrial confinement may be approved.”

In addition to the 72-hour commander’s decision, R.C.M. 305(i)(2) mandates that a review of the pretrial confinement be conducted by a neutral and detached officer within 7 days of the imposition of confinement. Lt. Col. Scheller’s 7-day review was initially scheduled for 30 September, but the defense agreed to delay the hearing until 5 October, to allow time for negotiations prior to the hearing. At the 7-day review, the Initial Review Officer considers the same requirements for confinement as laid out in R.C.M. 305(h)(2)(B), but the standard of proof is raised from a probable cause standard to a preponderance of the evidence.

On 14 October 2021, Lt. Col. Scheller pled guilty to all charges and specifications at a special court-martial. On 15 October 2021, he was sentenced to a \$5,000 forfeiture of one month’s pay and a letter of reprimand. The nature of Lt. Col. Scheller’s discharge will be determined by the Secretary of the Navy.

*By LT Atticus Lantos-Swett*





# NORTHWEST LEGAL BRIEFS

Fall 2021

Region Legal Service Office Northwest

## Navy Region Northwest Results of Trial

### June 2021

General Court-Martial. At a Special (Judge Alone) Court-Martial in Bremerton, Washington, MASN Reginald S. Williams, USN, was tried for one charge and specification of willful dereliction of duty and one charge and specification of battery. On 14 June 2021 the military judge found him guilty of all specifications and sentenced him to reduction in rank to paygrade E-2 and confinement for 30 days.

General Court-Martial. At a General Court-Martial in Bremerton, Washington, MA2 Erik D. Miller, USN, was tried for two specifications of sexual assault, two specifications of abusive sexual contact, and one specification of assault consummated by a battery. On 24 June 2021 the members found him guilty of all charges and specifications. The military judge sentenced him to reduction in rank to paygrade E-1, 40 months confinement, and a dishonorable discharge.

General Court-Martial. At a General Court-Martial in Bremerton, Washington, ETV1 Yusef R. Ali, USN, pled guilty pursuant to a pretrial agreement to one charge and specification of indecent recording and one charge and three specifications of possession of child pornography. On 28 June 2021, consistent with the pretrial agreement, the military judge sentenced him to reduction in rank to paygrade E-1, confinement for 48 months, and a dishonorable discharge.

### August 2021

General Court-Martial. At a General Court-Martial in Bremerton, Washington, Private First Class Logan O. Evans, USMC, was tried for two specifications of abusive sexual contact, one specification of simple

assault, one specification of assault consummated by a battery, and one specification of drunk and disorderly. On 12 August 2021 the members found him guilty of all charges and specifications and sentenced him to 150 days of confinement.

Special Court-Martial. At a Special (referred Judge Alone) Court-Martial in Bremerton, Washington, an E-4, USMC, was tried for one charge and specification of violation of a lawful general order. On 19 August 2021 the military judge found him not guilty.

Special Court-Martial. At a Special (referred Judge Alone) Court-Martial in Bremerton, Washington, an E-3, USMC, was tried for one charge and specification of violation of a lawful general order. On 19 August 2021 the military judge found him not guilty.

Special Court-Martial. At a Special Court-Martial in Bremerton, Washington, BM1 Marcel D. Hatcher, USN, pled guilty pursuant to a pretrial agreement to one charge and four specifications of selling or disposing of military property. On 27 August 2021, consistent with the pretrial agreement, the military judge sentenced him to a reduction in rank to paygrade E-1, 9 months confinement, \$4,000 in fines, and a bad conduct discharge.

### September 2021

Special Court-Martial. At a Special Court-Martial in Bremerton, Washington, ABE2 Paris A. Simmons, USN, pled guilty pursuant to a pretrial agreement to one charge and specification of larceny. On 27 September 2021, consistent with the pretrial agreement, the military judge sentenced him to a reduction in rank to paygrade E-3. The pretrial agreement contained a waiver of the accused's administrative separation board.



# NORTHWEST LEGAL BRIEFS

Fall 2021

Region Legal Service Office Northwest

## Command Leadership

**Commanding Officer:** CAPT Warren Record, JAGC, USN

**Executive Officer:** CDR Erika Gehlen, JAGC, USN

**Senior Enlisted Leader:** LNCS Kevin Jaress, USN

**Detachment Hawaii Office in Charge:** CDR Michele Rosen, JAGC, USN

**Detachment Hawaii Assistant Officer in Charge:** LCDR Keleigh Anderson, JAGC, USN

**Detachment Hawaii Leading Chief Petty Officer:** LNC Jean Padilla, USN

### RLSO NW Bremerton

**Command Services:** (360) 627-3014

Monday – Friday: 0730 – 1600

**Legal Assistance:** (360) 476-4275

Monday – Thursday: 0800 – 1600

Friday: 0800 – 1200

**Military Justice:** (360) 627-3003

Monday – Friday: 0730 – 1600

### RLSO NW DET Hawaii

**Command Services:** (808) 473-0437

Monday – Friday: 0800 – 1600 (HST)

**Legal Assistance:** (808) 473-0437

Monday – Friday: 0800 – 1600 (HST)

**Military Justice:** (808) 473-0437

Monday – Friday: 0800 – 1600 (HST)

### RLSO NW BROFF Bangor

**Legal Assistance:** (360) 396-6003

Monday – Thursday: 0800 – 1600

Friday: 0800 – 1200

### RLSO NW BROFF Everett

**Command Services:** (425) 304-4551

Monday – Friday: 0730 – 1600

**Legal Assistance:** (425) 304-4551

Monday – Thursday: 0800 – 1600

Friday: 0800 – 1200

### RLSO NW BROFF Whidbey Island

**Command Services:** (360) 257-2011

Monday – Friday: 0730 – 1600

**Legal Assistance:** (360) 257-2126

Monday – Thursday: 0830 – 1600

Friday: 0830 – 1230

**For Legal Assistance Walk-In Hours, please visit**

**[https://www.jag.navy.mil/legal\\_services/rlso/rlso\\_northwest.htm](https://www.jag.navy.mil/legal_services/rlso/rlso_northwest.htm)**

**For after-hours assistance, please contact the RLSO NW CDO at (360) 340-0353  
(Washington) or (808) 722-7544 (Hawaii)**

**If you have questions about this content or suggestions for future editions, please contact  
LTJG Josh Kinning at [josh.kinning@navy.mil](mailto:josh.kinning@navy.mil)**